

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19282
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On October 12, 2005, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer), proposing income tax, penalty, and interest for taxable years 1999 through 2003 in the total amount of \$131,293.

The taxpayer filed a timely appeal, and a telephone conference was held on April 4, 2006. The Tax Commission, having reviewed the file, hereby issues its decision.

Tax Commission records showed the taxpayer was an Idaho resident who appeared to meet the Idaho income tax filing requirements. He had not filed his returns, so the Bureau attempted to contact him for an explanation. He did not respond to the inquiries.

[Redacted] Idaho Code § 63-3045 (1)(a) states:

63-3045. Notice of redetermination or deficiency -- Interest. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

The Bureau prepared the missing Idaho returns on behalf of the taxpayer and sent him a NODD. The taxpayer filed a protest dated October 19, 2005, and furnished state and federal income tax returns for the years in question with a bottom line of zero tax due. The following statement signed “By [Redacted], Auth. Rep.” was attached to each copy of a W-2:

No payments were received by the party identified hereon as ‘the recipient’ from the party identified hereon as ‘the payer’ which were connected with the performance of the functions of a public office, or otherwise constituted gains, profit or income within the meaning of relevant law.

The petitioner chose to have a telephone conference and submit additional information to support his position. From the taxpayer’s protest letter, the arguments he offered during the telephone conference, and the additional information he provided, this is a tax protestor case.

It is not altogether clear exactly what arguments the taxpayer wishes to put forth. The issues appear to include (1) that royalties are not income, (2) that the income tax would be a direct tax that would need to be apportioned, (3) that the Idaho income tax is an unconstitutional excise or privilege tax, and (4) that the taxpayer is only taxable on income from Idaho sources.

The taxpayer’s first argument is that royalties are not income. The taxpayer received Forms 1099 showing that he had been paid royalties. The petitioner made up some new Forms 1099 showing that no royalties were received. However, it appears that he concedes that he received the funds.

Internal Revenue Code §61 defines gross income. It states, in part:

Gross income defined. (a) General definition.

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
 - (2) Gross income derived from business;
 - (3) Gains derived from dealings in property;
 - (4) Interest;
 - (5) Rents;
 - (6) Royalties;**
 - (7) Dividends;
 - (8) Alimony and separate maintenance payments;
 - (9) Annuities;
 - (10) Income from life insurance and endowment contracts;
 - (11) Pensions;
 - (12) Income from discharge of indebtedness;
 - (13) Distributive share of partnership gross income;
 - (14) Income in respect of a decedent; and
 - (15) Income from an interest in an estate or trust.
- (Emphasis added.)

The Commission finds that the statute leaves no doubt as to whether royalties are included within the definition of “gross income.” Therefore, the taxpayer’s argument is rejected.

The taxpayer’s next argument is that the Idaho income tax is a “direct” tax, and therefore is unconstitutional. This argument (as well as others) is an old, tired argument that has repeatedly been considered and rejected by the courts. The Tenth Circuit Court of Appeals summarily addressed it as follows:

As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: (1) individuals ("free born, white, preamble, sovereign, natural, individual common law 'de jure' citizens of a state, etc.") are not "persons" subject to taxation under the Internal Revenue code; (2) the authority of the United States is confined to the District of Columbia; (3) the income tax is a direct tax which is invalid absent apportionment, and Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759, modified, 158 U.S. 601, 15 S.Ct.

912, 39 L.Ed. 1108 (1895), is authority for that and other arguments against the government's power to impose income taxes on individuals; (4) the Sixteenth Amendment to the Constitution is either invalid or applies only to corporations; (5) wages are not income; (6) the income tax is voluntary; (7) no statutory authority exists for imposing an income tax on individuals; (8) the term "income" as used in the tax statutes is unconstitutionally vague and indefinite; (9) individuals are not required to file tax returns fully reporting their income; and (10) the Anti Injunction Act is invalid. (Underlining added.)

Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990).

The Eighth Circuit Court of appeals addressed the issue as follows:

The taxpayers argue further that the income tax is unconstitutional because it is a direct tax which is not apportioned, that there is no law imposing an income tax on them for 1977, that 26 U.S.C. §§ 3101, 3102, and 3402 are unconstitutional, that income cannot be defined or measured, and that an individual's "gross receipts" cannot be taxed. These arguments are wholly without merit.

Lively v. Commissioner, 705 F.2d 1017, 1018 (8th Cir. 1983).

The Commission finds no merit in the taxpayer's argument.

The next argument is that the Idaho income tax is in the nature of an excise tax or a privilege tax. Therefore, it is not enforceable for one reason or another. In discussing this issue and whether sanctions should be imposed on the taxpayer, the Seventh Circuit Court of Appeals stated the following:

The government has established all of the requisite elements for § 6702(a) liability. The returns filed by plaintiffs indicate that the self assessments are substantially incorrect. The fact that taxes were withheld demonstrates that plaintiffs received income in 1982; yet their returns indicate that they earned no income. See Davis, 742 F.2d at 172; Holker v. United States, 737 F.2d 751, 753 (8th Cir.1984) (per curiam). And there is absolutely no doubt that the legal contentions advanced by the plaintiffs are frivolous; indeed, plaintiffs' arguments are patently absurd.

[2][3][4] Plaintiffs argue first that they are exempt from federal taxation because they are "natural individuals" who have not

"requested, obtained or exercised any privilege from an agency of government." This is not a basis for an exemption from federal income tax. See Holker v. United States. All individuals, natural or unnatural, must pay federal income tax on their wages, regardless of whether they received any "privileges" from the government. Plaintiffs also contend that the Constitution prohibits imposition of a direct tax without apportionment. They are wrong; it does not. U.S. Const. amend. XVI; Parker v. Commissioner, 724 F.2d 469, 471 (5th Cir.1984). Finally, plaintiffs' assertion that money received in compensation for labor is not taxable has been rejected by numerous courts. See, e.g., Davis, 742 F.2d at 172; Simanonok v. Commissioner, 731 F.2d 743, 744 (11th Cir.1984) (per curiam). Cf. United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir.1984). Plaintiffs' other arguments against the income tax are equally frivolous.

[5] This court recently warned taxpayers who put forth frivolous arguments in bad faith that we would not hesitate to impose sanctions pursuant to Fed.R.App.P. 38. Granzow v. Commissioner, 739 F.2d 265, 269 70 (7th Cir.1984). See also Edgar v. Inland Steel Co., 744 F.2d 1276, 1278 (7th Cir.1984); United States v. Ekblad, 732 F.2d 562 (7th Cir.1984). Other circuits have imposed sanctions in § 6702 cases, see Martinez v. IRS, 744 F.2d 71 (10th Cir.1984) (per curiam); Davis, 742 F.2d at 173; Baskin v. United States, 738 F.2d 975, 977 (8th Cir.1984) (per curiam); Crain v. Commissioner, 737 F.2d 1417, 1418 (5th Cir.1984), and we believe sanctions are appropriate in this case. Accordingly, the United States shall recover, from plaintiffs, reasonable attorneys' fees and costs incurred in defending this appeal. The government shall file with this court, within 15 days of the date of this order, a submission as to the fees and costs it has incurred on appeal. The judgment of the district court is AFFIRMED.

Lovell v. United States, 755 F.2d 517, 519-520 (7th Cir. 1984).

This issue has been well established since at least 1984. There is no merit to the taxpayer's argument.

The next argument is that the funds received by the taxpayer were not from an Idaho source and that the taxpayer is only taxable on income from Idaho sources. Idaho Code § 63-3002 sets forth the legislative intent with regard to the Idaho income tax. It states:

Declaration of intent. -- It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States. (Emphasis added.)

The taxpayer was considered to have been a resident of the state of Idaho for the purpose of calculating his income tax liability. He has not argued that he did not reside in the state of Idaho during all times relevant to this matter or that he was domiciled in Idaho during the relevant period. Therefore, it seems clear to the Commission that the taxpayer's liability should be calculated as a resident of the state of Idaho.

In discussing some of the things that protestors believe (or allege that they believe), the Seventh Circuit Court of Appeals stated:

Some people believe with great fervor preposterous things that just happen to coincide with their self interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead so tax protesters think to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

Coleman v. Commissioner, 791 F.2d 68 at 69 (7th Cir. 1986.).

It is not entirely clear that all of the issues which the taxpayer wished to be addressed have been addressed in this decision. However, the taxpayer has the burden of showing that the notice of deficiency determination is incorrect. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574 (1986). He has failed to do so. The deficiency must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated October 12, 2005, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1999	\$11,192	\$ 2,798	\$ 4,611	\$ 18,601
2000	13,969	3,492	4,638	22,099
2001	20,239	5,060	5,159	30,458
2002	24,161	6,040	4,605	34,806
2003	20,687	5,172	2,851	<u>28,710</u>
			TOTAL	\$134,674

Interest has been computed through July 31, 2006.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
